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EXAMINER	
JARRETT, SCOTT L	

ART UNIT	PAPER NUMBER
3623	

MAIL DATE	DELIVERY MODE
02/04/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/081,020	FUNG ET AL.	
	Examiner	Art Unit	
	SCOTT L. JARRETT	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11 and 13-75* is/are pending in the application.

4a) Of the above claim(s) *45-59* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-44 and 60-75* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This **Final** Office Action is in response to Applicant's amendment filed December 12, 2007. Applicant's amendment amended claims 1-11, 13-44 and 6-75. Currently claims 1-11 and 13-75 are pending with claims 45-59 being previously withdrawn as directed to a non-elected invention.

Response to Amendment

2. The Objection to the Title in the previous office action is withdrawn in response to Applicant's amendment to the title.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Response to Arguments

3. Applicant's arguments filed December 12, 2007 have been fully considered but they are not persuasive.

Specifically Applicant remarks filed December 12, 2007 argue:

i) that the "specification as filed sufficiently discloses the subject matter of claims 11, 19, 37, 63 and 69" (in response to the 35 U.S.C. 112(1) rejection of Claims 11, 19, 37, 63 and 69; Last Paragraph, Page 17);

ii) that the Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers fails to be prior art under 35 U.S.C. 102(b) (Last Paragraph, Page 18; Paragraph 1, Page 19; Paragraph 1, Page 24);

iii) that the rejection involves impermissible hindsight (Last Paragraph, Page 21);

iv) that the taking of official notice is in adequate (Last Paragraph, Page 25; Paragraph 1, Page 26);

v) that the prior art of record fails to teach or suggest each of the claimed elements specifically that Winning Retail and/or Ibarra fails to teach of suggest:

- analyzing the collected transaction data to compute an aggregate synopsis of performance of a subject under observation (Claim 1; Paragraph 2, Page 20);
- hypothesizing, using the aggregate synopsis, said hypothesizing developing a hypotheses for store improvement, the hypothesis determining at lest one of a plurality of recommended actions, (Claim 1; Paragraph 2, Page 20; Paragraphs 1-2, Page 21);
- measuring a change in store performance as a result of the subject under observation applying the determined recommended actions (Claim 1; Paragraph 1, Page 22);
- hypothesizing further comprises hypothesizing business scenarios and the recommended actions comprise strategies to improve business operations and staffing profiles for increased sales (Claim 18; Last Paragraph, Page 22);
- a plurality of transactional data systems operable to gather the transaction data (Claim 25; Paragraph 1, Page 23); and

- defining a set of actions directed at improving store productivity as a function of skill proficiency and revenue generation (Claim 60; Paragraph 2, Page 25).

i) In response to Applicant's attempt to traverse the 35 U.S.C. 112(1) rejection of Claims 11, 19, 37, 63 and 69 (Last Paragraph, Page 17) by stating that the "specification as filed sufficiently discloses the subject matter of claims 11, 19, 37, 63 and 69" and by generally referring to several pages/lines in the specification; the examiner finds the traversal to be inadequate. The Applicant failed clearly indicate how the disclosure, would enable one of ordinary skill in the art to, as claimed in claims 11, 19, 37, 63 and 69:

- establish a staffing profile, indicative of *optimal staffing levels for each of the sales employee levels*, operable to obtain the timely performance goal;

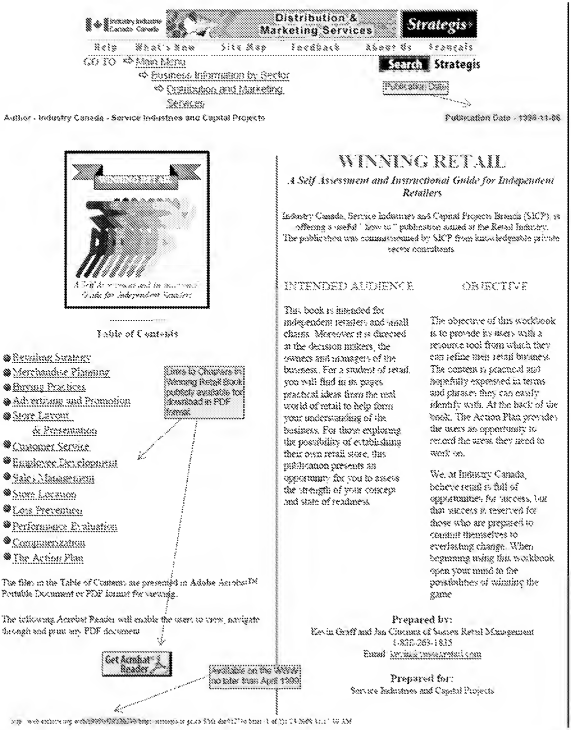
- create a staffing profile comprises an *optimal aggregation of sales employees of different skill levels;*

- how to develop, and subsequently output, optimal staffing profiles; and

- how to define a staffing profile indicative of an *optimal combination of employees based on the performance data*;

therefore the e 35 U.S.C. 112(1) rejection of Claims 11, 19, 37, 63 and 69 is herein maintained.

ii) In response to Applicant's argument that the Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers fails to be prior art under 35 U.S.C. 102(b), the examiner respectfully disagrees. The Winning Retail reference (more specifically PDF's of the individual chapters) was downloaded, via Archive.org which clearly indicates the date of publication to be November 1998 and that the Winning Retail reference was publicly available for download from the http://strategis.ic.gc.ca/ web site no later than April 1999 (see screen shot below, emphasis added).



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Publication Date

Author - Industry Canada - Service Industries and Capital Projects

Publication Date - 1998-11-06

WINNING RETAIL

A Self Assessment and Instructional Guide for Independent Retailers

Industry Canada, Service Industries and Capital Projects Branch (SICP) is offering a useful "how to" publication aimed at the Retail Industry. The publication was commissioned by SICP from knowledgeable private sector consultants.

INTENDED AUDIENCE

This book is intended for independent retailers and small chains. Moreover it is directed at the decision makers, the owners and managers of the business. For a student of retail, you will find in its pages practical ideas from the real world of retail to help form your understanding of the business. For those exploring the possibility of establishing their own retail store, this publication presents an opportunity for you to assess the strength of your concept and state of readiness.

OBJECTIVE

The objective of this workbook is to provide its users with a resource tool from which they can refine their retail business. The content is practical and hopefully expressed in terms and phrases they can easily identify with. At the back of the book, The Action Plan provides the users an opportunity to record the areas they need to work on.

We, at Industry Canada, believe retail is full of opportunities for success, but that success is reserved for those who are prepared to commit themselves to everlasting change. When beginning using this workbook open your mind to the possibilities of winning the game.

A Self Assessment and Instructional Guide for Independent Retailers

Table of Contents

Links to Chapters in Winning Retail Book publicly available for download in PDF format

The files in the Table of Contents are presented in Adobe Acrobat™ Portable Document or PDF format for viewing.

The following Acrobat Reader will enable the users to view, navigate through and print any PDF document.

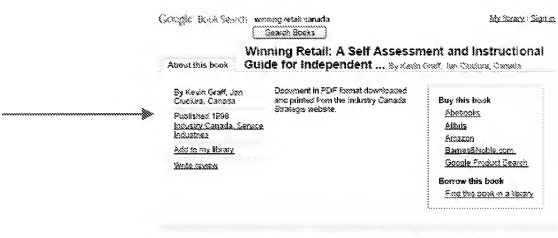
Get Acrobat Reader

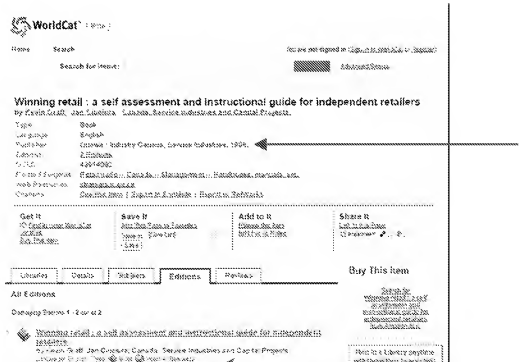
Available on the WWW no later than April 1999

Prepared by:
Kevin Graff and Jan Cimmers of Success Retail Management
1-800-263-1815
Email: [illegible]

Prepared for:
Service Industries and Capital Projects

Further a search using several bibliographic resources indicates the year of publication to be 1998 (see screen shots below, emphasis added).





iii) In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

iv) In response to Applicant's argument that the official notice is inadequate, the examiner respectfully disagrees. Applicant's attempt to traverse the Official Noticed facts in the previous Office Action(s) is inadequate. Specifically Applicant's attempt at traversing the Official Notice findings as stated in the previous Office Action(s) is inadequate wherein an adequate traversal is a two-step process. First, Applicant's must state their traversal on the record. Second and in accordance with 37 C.F.R. 1.111(b) which requires Applicant's to specifically point out the supposed errors in the Office Action, Applicant's must state why the Official Notice statement(s) are not to be considered common knowledge or well known in the art.

In this application, while Applicant's have clearly met step (1), Applicant's have failed step (2) since they have failed to argue why the Official Notice statement(s) are not to be considered common knowledge or well known in the art. Because Applicant's'

traversal is inadequate, the Official Notice statement(s) are taken to be admitted as prior art. See MPEP 2144.03.

Specifically it has been established that it was old and well known in the art at the time of the invention:

to scale performance measures when comparing/benchmarking one or more businesses based on the characteristics of the businesses;

- to select an "optimal" mix of employees having different skills and/or skill levels in an effort to ensure all the required/desired services/service level can be provided to customers.; and

- to utilize expert systems (artificial intelligence, rule-based, decision support systems, knowledge based, etc.) to automate decision making, planning or other business functions.

v) In response to Applicant's argument that the prior art of record fails to teach or suggest each element of the claimed invention, the examiner respectfully disagrees.

In response to Applicant's argument that the prior art of record fails to teach or suggest analyzing the collected transaction data to compute an aggregate synopsis of performance of a subject under observation (Claim 1; Paragraph 2, Page 20), the examiner respectfully disagrees.

Winning Retail teaches analyzing collected transaction data (Chapter 12, Pages 3, 6-8) to computer an aggregate synopsis (e.g. report, weekly performance statistics, summaries, current situation analysis; etc.) of a performance of a subject (store, clerk,

etc.) under observation (analysis engine; Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6).

In response to Applicant's argument that the prior art of record fails to teach or suggest hypothesizing, using the aggregate synopsis, said hypothesizing developing a hypotheses for store improvement, the hypothesis determining at lest one of a plurality of recommended actions, (Claim 1; Paragraph 2, Page 20; Paragraphs 1-2, Page 21)

Winning Retail teaches developing a hypothesis (guess, proposal, plan, etc.; e.g. coaching/training plan, key business strategies, etc.) determine a least one a plurality of recommended actions (staff training, store layout, etc.; "Develop Key Business Strategies", Figure 1; (Chapter 8, Column 1, Paragraph 2, Page 6; Chapter 8, Column 1, Numbers 1-3, Page 7; Chapter 8, Column 2, Number 1, Page 7);

In response to Applicant's argument that the prior art of record fails to teach or suggest measuring a change in store performance as a result of the subject under observation applying the determined recommended actions (Claim 1; Paragraph 1, Page 22)

Winning Retail teaches measuring a change in store performance as a result of the subject (staff, store, etc.) applying the determined recommended actions (e.g. current year vs. prior year; providing feedback-training on effect of the implemented recommendations, strategies, etc.; Figure 1, Chapter 1, Page 4; Column 2, Bullet 4,

Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14).

In response to Applicant's argument that the prior art of record fails to teach or suggest hypothesizing further comprises hypothesizing business scenarios and the recommended actions comprise strategies to improve business operations and staffing profiles for increased sales (Claim 18; Last Paragraph, Page 22)

Winning Retail teaches hypothesizing (proposing, generation, trying, implementing, etc.) business scenarios and recommended actions (e.g. coaching plan, training, etc.; Key Business Strategies) to improve business operations and staffing profiles for increased sales ("Implement and Monitor"; Chapter 8, Column 1, Paragraph 2, Page 6; Chapter 8, Column 1, Numbers 1-3, Page 7; Chapter 8, Column 2, Number 1, Page 7; Figure, Chapter 1, Page 4).

In response to Applicant's argument that the prior art of record fails to teach or suggest a plurality of transactional data systems operable to gather the transaction data (Claim 25; Paragraph 1, Page 23)

Winning Retail teaches a plurality of transactional data systems operable to gather transaction data (Chapter 12, Pages 3, 6-8).

In response to Applicant's argument that the prior art of record fails to teach or suggest defining a set of actions directed at improving store productivity as a function of skill proficiency and revenue generation (Claim 60; Paragraph 2, Page 25)

Winning Retail teaches defining sets of actions directed to improving store productivity as a function of skill proficiency and revenue generation (employee development, coaching/training, etc.; Chapter 7, Number 1, Page 3, Number 4, Page 4-5, Number 6, Pages 7-8, Number 9, Page 9; Chapter 8, Number 8, Pages 12-14; Number 9, Pages 14-15).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 11, 19, 37, 63 and 69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding Claim 11 the disclosure fails to state or teach one of ordinary skill in the art how to establish a staffing profile, indicative of *optimal staffing levels for each of the sales employee levels*, operable to obtain the timely performance goal. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Regarding Claim 19 the disclosure fails to state or teach one of ordinary skill in the art how to create a staffing profile comprises an *optimal aggregation of sales employees of different skill levels*. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Regarding Claim 37 the disclosure fails to state or teach one of ordinary skill in the art how to develop, and subsequently output, optimal staffing profiles. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Regarding Claims 63 and 69 the disclosure fails to state or teach one of ordinary skill in the art how to define a staffing profile indicative of an *optimal combination of employees based on the performance data*. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 73-74 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding Claims 73-74, Claims 73-74 merely recite descriptive material (software) per se. Claims 73-74 are therefore deemed to be directed to non-statutory subject matter where there is no indication that the proposed software is recorded on computer-readable medium and capable of execution by a computer.

Examiner suggests that the applicant incorporate into Claims 73-74 language that the proposed software (program code) is recorded on computer-readable medium and capable of execution by a computer to overcome this rejection.

Software, programming, instructions or code not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in a computer. When such descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.

Furthermore, software, programming, instructions or code not claimed as being computer executable are not statutory because they are not capable of causing functional change in a computer. In contrast, when a claimed computer-readable

medium encoded with a computer program defines structural and functional interrelationships between the computer and the program, and the computer is capable of executing the program, allowing the program's functionality to be realized, the program will be statutory.

Examiner interpreted claims 73-74 to be a software program encoded on a computer readable medium wherein the software, when executed on a computer, causes a computer to perform the method steps claimed.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 20-27, 38, 41-44 and 73-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers (1997, herein after WR).

Regarding Claims 20, 25 and 73-75 WR teaches a system and method for measuring and analyzing store performance comprising:

- storing/collecting store sales activity transaction data, indicative of store performance, from a plurality of available computer data sources including field performance, external, legacy (existing, old, etc.) *or* training data (data store, database, POS terminals, etc.; Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8);

- computing an aggregate synopsis (report results corresponding to quantitative data; performance summary, performance statistics, performance report, etc.) of performance of a subject (store, clerk, personnel, division, product, etc.) under observation, via a subsystem (analysis engine; Chapter 8, Number 8, Pages 12-14;

Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6);

- developing hypothesis (plan, idea, action, training, etc.) for store performance and determining at least one recommended action directed to improving the store performance (ideas, suggestion, training, coaching plan; etc.; Chapter 8, Column 1, Paragraph 2, Page 6; Chapter 8, Column 1, Numbers 1-3, Page 7; Chapter 8, Column 2, Number 1, Page 7);

WR further teaches a plurality of transactional data systems (stores, files, applications, subsystems, computers, POS terminals, inventory system/program, etc.) to gather transactional data (Chapter 12, Pages 3, 6-8).

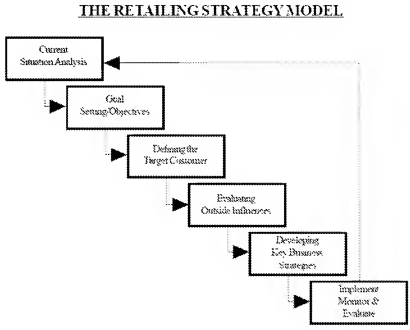


Figure 1: Figure, Chapter 1, Page 4

WEEKLY SCHEDULE

WEEK OF _____ LOCATION _____

	MON	TUES	WED	THURS	FRI	SAT	SUN	TOTAL
PROJECTED								
NAME								
Sam	750 $	*off*	500 $	600 $	670 $	670 $		3 190 $
	9-6		9-6	9-6	1-9	9-6		40
Lisa	750 $	500 $		600 $	670 $	670 $		3 190 $
	9-6	9-6	*off*	1-9	9-6	9-6		40
Mary		500 $	500 $					1 000 $
		9-6	9-6					16
Bill						670 $		670 $
						9-6		8
Hiruvey					330 $	495 $		1 125 $
					5-9	11-6		14
Mike				300 $	330 $	495 $		1 125 $
				5-9	5-9	9-6		14
TOTAL	1 500	1 000	1 000	1 500	2 000	3 000		10 000
Sales/hr	93.75 $	62.50 $	62.50 $	75,00 $	83.33 $	78,95 $		78,75 $

Figure 2: Table, Chapter 8, Page 10

INDIVIDUAL PERFORMANCE SUMMARY

EMPLOYEE _____ STORE _____

	MON	TUES	WED	THURS	FRI	SAT	SUN	TOTAL
DATE	**10/12**	**10/13**	**10/14**	**10/15**	**10/16**	**10/17**	**10/18**	
TOTAL SALES	807.22	377,06	-	622 11	$11.00	755,62	-	3 273,01
TOTAL CUSTOMERS	29	12	-	21	17	22	-	92
TOTAL ITEMS	53	20	-	36	33	36	-	152
SCHEDULED HOURS	9-6	9-6	*off*	1-9	9-6	9-6	*off*	40
SELLING HOURS	8	8	-	8	8	8	-	40
ITEMS / SALE	1.65	1.67	-	1,43		1.64	-	1.67
AVERAGE SALE	40.76	31.42	-	31.53		32,57	-	36.66
SALES / HOUR	109.90	47.13	-	$2.76		89,45	-	$4.33

Figure 3: Table, Chapter 8, Page 12, emphasis added

WEEKLY ANALYSIS

Store _____# 222_____ Week ending ___March 12, 95____

Sales Person	*Sam*	*Tom*	*Sue*	*Jane*	*Phil*		Totals
Clerk Number	*1*	*3*	*4*	*5*	*7*		
Employee Number	*221*	*329*	*782*	*417*	*523*		
Hours Worked	*42*	*42*	*46*	*28*	*9*		156.00
Total Sales	*4733,08*	*2 817,25*	*3746,57*	*1 790,25*	*723,12*		12 808.27
Total Customers	*72*	*55*	*49*	*46*	*13*		235,00
Total Items	*173*	*95*	*115*	*120*	*30*		533.00
Items / Sale	*2,4*	*1,73*	*2,35*	*2,61*	*2,3*		2,27
Average sale	*65,71*	*51,22*	*58,05*	*38,92*	*55,62*		54,50
Sales / Hours	*112,64*	*67,08*	*62,66*	*77,84*	*80,35*		82,10

Figure 4: Table, Chapter 8, Page 13, emphasis added

Category: All Apparel Stores

PERFORMANCE STATISTICS	ENTER YOUR RESULTS	TYPICAL RESULTS Current year	Prior year
PROFITABILITY			
Net profit after tax to net sales	_____	1.63%	2.05%
Net profit after tax to total assets	_____	6.40%	8.46%
Net profit after tax to net worth	_____	17.08%	23.86%
PRODUCTIVITY			
Net sales per store	_____	$928,787	$922,353
Net sales per square foot of total store area	_____	$284.34	$346.83
Average store size	_____	3,266 ft	2,659 ft
INVENTORY			
Gross margin to net sales	_____	41.66%	40.94%
Gross margin return on inventory	_____	292.01%	296.20%
Inventory turnover	_____	4.11	4.40
PERSONNEL			
Sales per employee	_____	$130,155	$125,484
Number of part-time employees as % of total part-time and full-time employees	_____	45.75%	45.04%

Figure 5: Chart, Chapter 11, Page 10, emphasis added

Regarding Claim 21 WR teaches a store performance evaluation system and method wherein measuring a change further comprises repeating iteratively the method steps (i.e. feedback mechanism for monitoring recommended actions and gathering, in an iterative manner, additional transaction data of an effect of the implemented recommendations; Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14).

Regarding Claim 22 WR teaches a store performance evaluation system and method further comprising a security scheme for providing selected access to the transaction data determined as a function of need to know and a user's store management role within the sales organization (Chapter 12, Number 24, Page 9).

Regarding Claim 23 WR teaches a store performance evaluation system and method further comprising a learning center (performance board, coaching plan, etc.) to implement the determined recommended actions (Chapter 7, Column 2, Last Paragraph, Page 4; Charts Chapter 8; Chapter 8, Column 1, Paragraph 2, Page 12; Chapter 8, Page 9; Chapter 8, Number 10, Page 15).

Regarding Claims 24 WR teaches a store performance evaluation system and method wherein the feedback mechanism is used to monitor an advancement cycle of a

sales employee based on the transactional data and a management certification (employee development; Chapter 7, Number 1, Page 3, Number 4, Page 4-5, Number 6, Pages 7-8, Number 9, Page 9; Chapter 8, Number 8, Pages 12-14; Number 9, Pages 14-15).

Regarding Claim 26 WR teaches a store performance evaluation system and method further comprising a database to store a plurality of normalized data records and a knowledge base to store aggregate data having a plurality of granularity levels (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 10-11, Pages 5-6; Chapter 12, Numbers 20-22, Page 8).

Regarding Claim 27 WR teaches a store performance evaluation system and method further comprising generating a plurality of performance scores to be compared to a predetermined performance range (goals, standards, benchmarks, etc.; Chapter 8, Numbers 5-8, Pages 5-14).

Regarding Claim 38 WR teaches a store performance evaluation system and method further comprising an operator for manual inspection of the aggregate synopsis (Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6).

Regarding Claims 41-43 WR teaches a store performance evaluation system and method wherein the plurality of recommended actions correspond to a library of multimedia solutions which provide educational development of skill and knowledge (curricula, coursework, training, etc.) and include magnetic, optical *or* printed materials (videos, training materials, training support, classroom, etc.; Column 2, Last Paragraph, Chapter 7 Page 4).

Regarding Claim 44 WR teaches a store performance evaluation system and method further comprising computing quantitative data and generate qualitative conclusions (Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6).

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 73-75 rejected under 35 U.S.C. 102(e) as being anticipated by Matsko et al, U.S, Patent NO. 7,093,748.

Regarding Claims 73-75 Matsko et al. teach a computer implemented method for measuring and analyzing store performance comprising (Abstract; Figures 3a, 3c, 3d; Columns 9-12):

- collecting transaction data of store sales activity, utilizing a plurality of available data sources comprising two or more of field performance, external, legacy *or* training data and including customer data; the data being indicative of store performance (Column 1, Lines 29-68; Column 2, Lines 1-43; Column 3, Lines 35-68; Column 4, Lines 44-68; Column 9, Lines 1-68; Figures 3a, 3c, 3d);

- analyzing the collected transaction data to computer an aggregate synopsis (summary, report, etc.) of the performance of a subject (store, employee, piece of equipment, hardware, software, etc.) under observation (Column 4, Lines 43-68; Column 6, Lines 17-42; Column 12, Lines -145; Figure 4);

- hypothesizing (testing, experimenting, simulating, guessing, thinking, postulating, proposing, etc.) using the aggregate synopsis, the hypothesizing developing a hypothesis (proposal, recommendation, suggestion, explanation, idea, prediction, statement, etc.) for store improvement, the hypotheses determining at least one of a plurality of recommended actions (Column 3, Lines 1-9; Column 11, Lines 53-68; Column 12, Lines 1-68);

- applying the determined recommend actions to the subject under observation (Column 11, Lines 53-68; Column 12, Lines 1-68); and

- measuring a change in the store performance as a result of the subject under observation applying the determined observation (Column 12, Lines 32-45, 49-65).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 28-37 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers (1997, herein after WR) as applied to claims 20-27, 38, 41-43 and 73-75 above and further in view of Ibarra, U.S. Patent No. 6,119,097.

Regarding Claims 28-29 WR teaches a store performance evaluation system and method further comprising:

- comparing the aggregate synopsis to performance scores (values, ratings, metrics, measures, etc.) within a predetermined performance range (goal, threshold, levels, etc.; Chapter 8, Numbers 4-8, Pages 5-13); and

- mapping (matching) the aggregate synopsis to the plurality of recommended actions (Chapter 8, Numbers 4-8, Pages 5-13).

WR does not expressly teach mapping (matching) the aggregate synopsis to the plurality of recommended actions in the *predetermined range* as claimed.

Ibarra teaches a system and method for performance evaluation comprising: comparing the aggregate synopsis to performance scores (values, ratings, metrics, measures, etc.) within a predetermined performance range (levels, standards, etc.; Column 8, Lines 57-68; Column 9, Lines 4-19; Figure 10); and mapping (matching) the aggregate synopsis to the plurality of recommended actions in the predetermined range (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting performance standards/goals by selecting and implementing the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

More generally Ibarra teaches a retail performance evaluation system and method comprising:

- collecting store sales activity transaction data (activities), indicative of an employees performance (Column 2, Lines 3-31; Column 16, Lines 15-27; Figure 2);

- analyzing the transaction data to compute a aggregate synopsis of performance of a subject under observation, via a subsystem (Column 6, Lines 1-25, 53-60);

- developing at least one of a plurality of recommended actions for store improvement (Column 6, Lines 61-68; Column 7, Lines 1-7, 43-68);

- applying the determined recommended actions to the subject under observation (Column 1, Lines 55-65; Column 7);

- measuring a change (improvement, impact, effect, etc.) on store performance as a result of the subject under observation applying the determined recommended actions, via a subsystem (Column 7, Lines 3-5; Column 8, Lines 5-9);

- wherein the subject under observation further comprises a sales employee having a plurality of levels and performance standards for each level (Column 4, Line 25; Column 6, Lines 53-68; Column 10, Lines 15-25; Figure 10).

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from mapping (matching) the aggregate synopsis to the plurality of recommended actions in the predetermined range in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the performance standards/goals by selecting the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claims 31 WR teaches a store performance evaluation system and method wherein the subject under observation further comprises a sales employee having a plurality of levels and performance standards for each level (Chapter 8, Number 5, Pages 5-6; Chapter 8, Tables on Pages 10, 12, 13; Chapter 8, Number 7,

Elements b, f, Page 11; Chapter 8, Column 1, Paragraph 5, Page 14; Chapter 8, Number 9, Pages 14-15).

Regarding Claims 32 WR teaches a store performance evaluation system and method wherein the performance standards correspond to a subset of a predefined set of customer focused skills attained by the sales employee (Chapter 7, Number 6, Pages 6-8; Chapter 7, Number 8, Pages 8-9; Chapter 8, Numbers 4-8, Pages 5-13).

Regarding Claims 33-34 WR teaches a store performance evaluation system and method further comprising capturing store characteristics pertinent to the transaction data as well as comparing store performances to other stores (Chapter 1, Number 7, Pages 12-13; Chapter 11, Page 9; Chapter 12, Number 10, Element 1).

WR does not expressly teach scaling performance scores corresponding to store characteristics via a scaling matrix wherein the scaling factors comprise volume, store location and timing as claimed.

Official notice is taken that it is old and well known to scale performance measures when comparing/benchmarking one or more businesses based on the characteristics of the businesses (size, sales, volume, industry, number of employees, etc.; sometime referred to standardizing or normalizing or comparative performance

analysis) in order to perform an "apples-to-apples" comparison between the two businesses/enterprises/employees.

For example, if car dealership A generally has more sales volume than car dealership B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume thereby assisting in accurately analyzing and/or comparing the employees and/or store performances.

It would have been obvious to one skilled in the art at the time of the invention that the system and method that the system and method for evaluating store and employee performance would have benefited from scaling performance scores corresponding to store characteristics via a scaling matrix utilizing any of a plurality of scaling factors in view of the teachings of official notice; the resultant system/method enabling users to make apples-to-apples performance comparison between different employees and/or stores.

Regarding Claims 35-36 WR teaches a store performance evaluation system and method further comprising setting performance goals corresponding to the subject under observation and adjusting the predetermined performance range (goals, levels) in response to the performance goal and further setting goals according to at least one of daily, weekly, monthly, quarterly *or* yearly intervals (Chapter 8, Number 8, Pages 12-14; Chapter 12, Number 12, Page 8).

Regarding Claim 30 WR does not expressly teach that the intended use of the provided performance standards is for determining a ranking within the *predetermined performance range* or mapping the ranking into a *predetermined list* of recommended actions as claimed.

Ibarra teaches that utilizing performance ranges (standards, goals, etc.) to rank of employees, stores, departments, or the like is old and well known (Column 1, Lines 20-30) in an analogous art of performance management for the purposes of comparing performance between employees (subjects) for promotions, bonuses or other management decisions (Column 1, Lines 20-30).

Ibarra further teaches ranking the performance of employees within predetermined ranges (levels; Column 4, Lines 52-65; Column 5, Lines 1-12; Column 10, Lines 15-25; Figure 10) for the purposes of view employees with different performance levels/ranks of one or more performance standards.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR with its ability to rate the employee's and/or store's performance against one or more performance standards each corresponding to at least a portion of the aggregate synopsis would have benefited determining a ranking within the predetermined performance range in view of the teachings of Ibarra; the resultant system/method enabling user's to comparing performance between employees and/or stores (Ibarra:

Column 1, Lines 20-30) and/or view store/employee's relative performance to the performance range.

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from defining a set of predetermined actions directed to improving store productivity as a function of skill proficiency and revenue generation in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the predetermined/predefined set of performance standards/goals by selecting the recommended actions, from a predetermined list of actions, most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claim 37 WR teaches a store performance evaluation system and method further comprising providing output indicative of staffing profiles, as discussed above.

WR does not expressly teach that the staffing profiles are *optimal* as claimed.

Official notice is taken that it is old and well known to select an "optimal" mix of employees having different skills and/or skill levels in an effort to ensure all the required/desired services/service level can be provided to customers.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR would have benefited from determining a staffing profile comprising sales employees of different skill levels in view of the teachings of official notice.

Regarding Claims 39-40 and 70 WR does not expressly expert system operable for quantitative analysis.

Official notice is taken that utilizing expert systems (artificial intelligence, rule-based, decision support systems, knowledge based, etc.) to automate decision making, planning or other business functions is old and very well known wherein expert systems provide a known benefit of "emulating" the knowledge and analytical skills of one or more human experts.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR would have benefited from using any of a plurality of well known automation techniques and/or system architectures including but not limited to expert systems in view of the teachings of official notice; the resultant system/method being capable of "emulating" the knowledge and analytical skills of one or more human experts.

14. Claims 1-2 and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsko et al, U.S. Patent No. 7,093,748 in view of Capillo, Joe, Sales Performance Accountability (1998).

Regarding Claim 1 Matsko et al. teach a computer implemented method for measuring and analyzing store performance comprising (Abstract; Figures 3a, 3c, 3d; Columns 9-12):

- collecting transaction data of store sales activity, utilizing a plurality of available data sources comprising two or more of field performance, external, legacy *or* training data and including customer data; the data being indicative of store performance (Column 1, Lines 29-68; Column 2, Lines 1-43; Column 3, Lines 35-68; Column 4, Lines 44-68; Column 9, Lines 1-68; Figures 3a, 3c, 3d);

- analyzing the collected transaction data to computer an aggregate synopsis (summary, report, etc.) of the performance of a subject (store, employee, piece of equipment, hardware, software, etc.) under observation (Column 4, Lines 43-68; Column 6, Lines 17-42; Column 12, Lines -145; Figure 4);

- hypothesizing (testing, experimenting, simulating, guessing, thinking, postulating, proposing, etc.) using the aggregate synopsis, the hypothesizing developing a hypothesis (proposal, recommendation, suggestion, explanation, idea, prediction, statement, etc.) for store improvement, the hypotheses determining at least one of a plurality of recommended actions (Column 3, Lines 1-9; Column 11, Lines 53-68; Column 12, Lines 1-68);

- applying the determined recommend actions to the subject under observation (Column 11, Lines 53-68; Column 12, Lines 1-68); and

- measuring a change in the store performance as a result of the subject under observation applying the determined observation (Column 12, Lines 32-45, 49-65).

While customer count visit data is an very old and well known data element collected by retail stores Matsko et al. does not expressly teach that the collected data includes including customer count visit data as claimed.

Capillo teaches collecting and analyzing customer count visit data (Paragraph 3, Page 1; Paragraph 3, Page 2; Paragraph 2, Page 4; Paragraph 5, Page 3) in analogous are of store performance measurement for the purposes of improving store and employee performance by making employees accountable for their contribution to store performance (Paragraphs 1-2, Page 1; Last Two Paragraphs, Page 2; Paragraph 4, Page 4).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance would have benefited from utilizing any of a plurality of well known and/or widely used store performance measures including but not limited to customer count visit data in view of the teachings of Capillo; the resultant system/method improving store and employee

performance by making employees accountable for their contribution to store performance (Capillo: Paragraphs 1-2, Page 1; Last Two Paragraphs, Page 2).

Regarding Claim 2 Matsko et al. teach a computer implemented method for measuring and analyzing store performance further comprising repeating the collecting, analyzing, hypothesizing and applying in an iterative manner (Column 11, Lines 45-68; Column 12, Lines 1-68).

Regarding Claims 13 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein the data includes *at least one of* sales per hour, dollars per transaction, units per transaction, transactions per hour, traffic conversion percentage, customer traffic count *or* periodic goals (Figures 3a, 3c, 3d).

Regarding Claim 14 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein the legacy data includes *at least one of* administrative, accounting, tax, market research, merchandise grouping, human resource or store revenue goal data (Column 7, Lines 62-68; Column 8, Lines 1-68; Column 9; Figures 2a, 3c, 3d).

Regarding Claim 15 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein the aggregate synopsis further

comprising report results corresponding to the qualitative data (Column 11, Lines 52-68; Column 12, Lines 32-68; Column 2, Lines 43-47).

Regarding Claim 16 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein the transaction data corresponds to retail stores and sales employees (Columns 11-12; Figures 3a, 3c 3d).

Regarding Claim 17 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein applying the recommended actions comprises skill development at a sales employee level and strategies at a store level (Column 1, Lines 29-44; Column 11, Lines 52-68; Column 12, Lines 16-68).

Regarding Claim 18 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein hypothesizing further comprising hypothesizing business scenarios and recommend actions comprise strategies to improve business operations and staffing profiles for increased sales (Column 3, Lines 1-9; Column 11, Lines 53-68; Column 12, Lines 1-68).

15. Claims 3, 9-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable Matsko et al, U.S. Patent No. 7,093,748 in view of Capillo, Joe, Sales Performance Accountability (1998) as applied to claims 1-2 and 13-18 above, and further in view of McIllwaine et al., U.S. Patent No. 6,342,282.

Regarding Claim 3 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein hypothesizing (testing, experimenting, simulating, guessing, thinking, postulating, proposing, etc.) further comprises comparing the aggregate synopsis to performance scores (diagnostics, metrics; Column 12, Lines 16-68).

Matsko et al. does not expressly teach that hypothesizing (testing, experimenting, simulating, guessing, thinking, postulating, proposing, etc.) further comprises: comparing the aggregate synopsis (results, report, summary, etc.) to performance scores within a predetermined performance range; and mapping the aggregate synopsis to the plurality of recommended actions based on the predetermined performance range as claimed.

McIllwaine et al. teach a computer implemented method for measuring and analyzing store performance wherein hypothesizing (testing, experimenting, simulating, guessing, thinking, postulating, proposing, etc.) further comprises:

- comparing the aggregate synopsis (results, report, summary, etc.) to performance scores within a predetermined performance range/threshold (Column 5, Lines 16-35; Column 6, Lines 20-46; Column 8, Lines 20-50; Column 9, Lines 21-45; Figures 2, 3b, Elements 244, 246, 248, 250);

- mapping the aggregate synopsis to the plurality of recommended actions based on the predetermined performance range (Column 3, Lines 7-16; Column 8, Lines 51-68; Figure 3b, Elements 244, 246, 258; Figure 3c, Elements 286, 288, 292, 294);

in an analogous art of performance measurement for the purpose of tailoring recommend actions (training) to the subject under observation's (agent) based on the comparison of their performance (scores/metrics) to threshold (goal, desired, required, etc.) performance standards/levels (Abstract).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance as taught by the combination of Matsko et al. and Capillo would have benefited from comparing and mapping/correlation an aggregate synopsis to the plurality of recommended actions based on the predetermined performance range in view of the teachings of McIllwaine et al.; the resultant system and method enabling a store to improve its performance by providing tailored training to its staff/employees (Abstract).

Regarding Claims 9-10 Matsko et al. teach a computer implemented method for measuring and analyzing store performance further comprising setting timely performance goals (daily, weekly, monthly, quarterly, yearly, etc.) corresponding to the subject under observation and adjusting the performance range in response to the performance goals.

Regarding Claim 11 Matsko et al. teach a computer implemented method for measuring and analyzing store performance further comprising establishing a staffing profile, indicative of optimal staffing levels for each of the sales employee levels, to obtain the performance goal (Column 4, Lines 53-64).

Regarding Claim 19 Matsko et al. does not expressly teach that the staffing profile further comprises an optimal aggregation of sales employees at different levels as claimed.

McIllwaine et al. teach a computer implemented method for measuring and analyzing store performance comprising determining an optimal staffing profile (Column 4, Lines 53-64; Figure 1, Elements 40, 48).

Matsko et al., Capillo nor McIlwaine et al. not expressly teach that the aggregation of employees at different skill levels is *optimal* as claimed.

Official notice is taken that it is old and well known to select an "optimal" mix of employees having different skills and/or skill levels in an effort to ensure all the required/desired services/service level can be provided to customers.

For example, a retailer would know to staff a manager when scheduling one or more employees, or co-schedule experienced and inexperience workers together vs. scheduling a shift with all new employees, or scheduling a mix of full-time and part-time employees, or scheduling someone who speaks Spanish if customer's speak primarily Spanish, and the like.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance as taught by the combination of Matsko et al., Capillo and McIllwaine et al. would have benefited from staffing profiles comprising an optimal aggregation of sales employees at different levels in view of the teachings of official notice.

16. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable Matsko et al, U.S. Patent No. 7,093,748 in view of Capillo, Joe, Sales Performance Accountability (1998) in view of McIlwaine et al., U.S. Patent No. 6,342,282 as applied to claims 3, 9-11 and 19above, and further in view of Ibarra, U.S. Patent No. 6,119,097.

Regarding Claim 4 Matsko et al. teach a computer implemented method for measuring and analyzing store performance further comprises providing a set of performance standards corresponding to at least a portion of the aggregate synopsis and for determining a ranking within the predetermined performance range.

Matkso et al. does not expressly teach that the intended use of the provided performance standards is for determining a ranking within the predetermined performance range as claimed.

Ibarra teaches that utilizing performance ranges (standards, goals, etc.) to rank employees, stores, departments, or the like is a common business practice (Column 1, Lines 20-30) in an analogous art of performance management for the purposes of comparing performance between employees (subjects) for promotions, bonuses or to support other management decisions (Column 1, Lines 20-30).

Ibarra further teaches ranking the performance of employees within predetermined ranges (levels; Column 4, Lines 52-65; Column 5, Lines 1-12; Column

10, Lines 15-25; Figure 10) for the purposes of view employees with different performance levels/ranks relative to one or more performance standards.

Ibarra teaches a system and method for performance evaluation comprising: comparing the aggregate synopsis to performance scores (values, ratings, metrics, measures, etc.) within a predetermined performance range (levels, standards, etc.; Column 8, Lines 57-68; Column 9, Lines 4-19; Figure 10); and mapping (matching) the aggregate synopsis to the plurality of recommended actions in the predetermined range (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting performance standards/goals by selecting and implementing the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

More generally Ibarra teaches a retail performance evaluation system and method comprising:

- collecting store sales activity transaction data (activities), indicative of an employees performance (Column 2, Lines 3-31; Column 16, Lines 15-27; Figure 2);

- analyzing the transaction data to compute a aggregate synopsis of performance of a subject under observation, via a subsystem (Column 6, Lines 1-25, 53-60);

- developing at least one of a plurality of recommended actions for store improvement (Column 6, Lines 61-68; Column 7, Lines 1-7, 43-68);

- applying the determined recommended actions to the subject under observation (Column 1, Lines 55-65; Column 7);

- measuring a change (improvement, impact, effect, etc.) on store performance as a result of the subject under observation applying the determined recommended actions, via a subsystem (Column 7, Lines 3-5; Column 8, Lines 5-9);

- wherein the subject under observation further comprises a sales employee having a plurality of levels and performance standards for each level (Column 4, Line 25; Column 6, Lines 53-68; Column 10, Lines 15-25; Figure 10).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by the combination of Matsko et al., Capillo and McIllwaine et al. with its ability to rate the employee's and/or store's performance against one or more performance standards each corresponding to at least a portion of the aggregate synopsis would have benefited determining a ranking within the predetermined performance range in view of the teachings of Ibarra; the resultant system/method enabling user's to comparing performance between employees and/or stores (Ibarra: Column 1, Lines 20-30) and/or view store/employee's relative performance to the performance range.

Regarding Claim 5 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein the subject under observation is a sales employee having a plurality of skill levels and performance standards defined for each skill level (Column 5, Lines 16-35; Column 6, Lines 20-46; Column 8, Lines 20-50; Column 9, Lines 21-45; Figures 2, 3b, Elements 244, 246, 248, 250).

Regarding Claim 6 Matsko et al. teach a computer implemented method for measuring and analyzing store performance wherein the performance standard correspond to a subset of customer focused skills attained by the sales employee (Column 5, Lines 16-35; Column 6, Lines 20-46; Column 8, Lines 20-50; Column 9, Lines 21-45; Figures 2, 3b, Elements 244, 246, 248, 250).

Regarding Claim 7-8 Matsko et al. does not expressly each that the performance standards comprise a scaling matrix operable to scale the performance scores, the matrix having scaling factors corresponding to store characteristics and include store volume, location and timing as claimed.

Matsko et al. does not expressly teach scaling performance scores corresponding to store characteristics via a scaling matrix wherein the scaling factors comprise volume, store location and timing as claimed.

Official notice is taken that it is old and well known to scale performance measures when comparing/benchmarking one or more businesses based on the characteristics of the businesses (size, sales, volume, industry, number of employees, etc.; sometime referred to standardizing or normalizing or comparative performance analysis) in order to perform an "apples-to-apples" comparison between the two businesses/enterprises/employees.

For example, if car dealership A generally has more sales volume than car dealership B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume thereby assisting in accurately analyzing and/or comparing the employees and/or store performances.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance as taught by Matsko et al. would have benefited from scaling performance scores corresponding to store characteristics via a scaling matrix utilizing any of a plurality of scaling factors in view of the teachings of official notice; the resultant system/method enabling users to make apples-to-apples performance comparison between different employees and/or stores.

17. Claims 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable McIllwaine et al., U.S. Patent No. 6,342,282 in view of Ibarra, U.S. Patent No. 6,119,097and further in view of Matsko et al., U.S, Patent No. 7,093,748.

Regarding Claim 60 McIllwaine et al. teach a system and method for improving business productivity comprising:

- gathering transaction data of business sales activity from a plurality of available computer data sources, the data including at least one or external, legacy, field performance *or* training data and corresponding to at least one employee (Column 4, Lines 28-48; Column 7, Lines 55-68; Column 8, Lines 1-7; Figure 1, Element 20);

- analyzing the gathered transaction data to determine a scoring of employee performance, the gather transaction data indicative of revenue generation and skill performance of each of the least one employee (Column 6, Lines 20-46; Column 5, Lines 16-35; Column 8, Lines 20-50; Column 9, Lines 21-48; Figures 2, 3B, elements 244, 246, 248, 250);

- defining a set of recommended actions directed at improving store productivity as a function of skill proficiency and revenue generation (Column 5, Lines 35-40; Column 6, Lines 20-46; Column 9, Lines 21-47);

- correlating the scoring with the set of recommended actions (Column 3, Lines 7-16; Column 8, Lines 51-69; Figures 3b, 3c, elements 244, 246, 248, 296, 288, 292, 294; Figure 1, Element 53);

- implementing, based on the correlating, at least one of the recommended actions (Column 3, Lines 7-16; Column 8, Lines 51-69; Figures 3b, 3c, elements 244, 246, 248, 296, 288, 292, 294; Figure 1, Element 53); and

McIllwaine et al. does not expressly teach determining a ranking within the *predetermined performance range* as claimed.

Ibarra further teaches ranking the performance of employees within predetermined ranges (levels; Column 4, Lines 52-65; Column 5, Lines 1-12; Column 10, Lines 15-25; Figure 10) for the purposes of view employees with different performance levels/ranks of one or more performance standards.

Ibarra further teaches that utilizing performance ranges (standards, goals, etc.) to rank of employees, stores, departments, or the like is old and well known (Column 1, Lines 20-30) in an analogous art of performance management for the purposes of comparing performance between employees (subjects) for promotions, bonuses or other management decisions (Column 1, Lines 20-30).

Ibarra teaches defining a set of predetermined actions directed to improving store productivity (Column 6, Lines 61-68; Column 7, Lines 1-7, 43-68) as a function of skill proficiency and revenue generation (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting the

performance standards/goals by selecting the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance as taught by McIllwaine et al. would have benefited determining a ranking within the predetermined performance range in view of the teachings of Ibarra; the resultant system/method enabling user's to comparing performance between employees and/or stores (Ibarra: Column 1, Lines 20-30) and/or view store/employee's relative performance to the performance range.

McIllwaine et al. does not expressly teach measuring productivity improvement of the store resulting from the implementing of the at least one recommended action.

Matsko et al. teach measuring a change in the store performance as a result of the subject under observation applying the determined observation (Column 12, Lines 32-45, 49-65) in an analogous art of store performance management for the purpose of assisting decision makers in measuring/hypothesizing the impact of the recommended actions on the store performance thereby assisting in their decisions (Column 11, Lines 52-63; Column 12, Lines 48-68).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance as taught by the combination of McIllwaine et al. and Ibarra would have benefited from measuring productivity improvement of the store resulting from the implementing of the at least one recommended action in view of the teachings of Matsko et al.; the resultant system and method assisting users in analyzing the before/after affects (improvements) of the recommended actions (Matsko et al.: Column 11, Lines 52-63; Column 12, Lines 48-68).

Regarding Claims 61 and 62 McIllwaine et al. teach a system and method for measuring business performance wherein the method steps are performed iteratively (repeatedly, continuously, etc.; Column 5, Lines 5-35; Column 8, Lines 41-63; Figures 3b, 3c).

Regarding Claim 63 McIllwaine et al. teach a system and method for analyzing and measuring business performance comprising defining and implementing an optimal staffing profile (Column 4, Lines 53-64).

18. Claims 64-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over McIllwaine et al., U.S. Patent No. 6,342,282 in view of Matsko et al., U.S, Patent No. 7,093,748.

Regarding Claim 64 McIllwaine et al. teach a computer implemented method for assessing and improving the performance of a store (business) comprising:

- gathering, via a sales transactional data interface, from a plurality of available computer data sources including at least one of the following field performance, legacy, training or transactional data, the gather data indicative of the revenue generating performance of at least one subject employee (Column 4, Lines 28-48; Column 7, Lines 55-68; Column 8, Lines 1-7; Figure 1, Element 20);

- aggregating and storing, via a data store, the gathered transactional data (Column 4, Lines 28-48; Column 7, Lines 55-68; Column 8, Lines 1-7; Figure 1, Element 20);

- generating, via an analysis engine, quantitative reports indicative of aggregate revenue generating performance of each of the at least one subject employee (Column 6, Lines 20-46; Column 5, Lines 16-35; Column 8, Lines 20-50; Column 9, Lines 21-48; Figures 2, 3B, elements 244, 246, 248, 250);

- determining, based in the quantitative reports and a performance range (threshold), a performance ranking (scoring) corresponding to each of at least one subject employee (Column 6, Lines 20-46; Column 5, Lines 16-35; Column 8, Lines 20-50; Column 9, Lines 21-48; Figures 2, 3B, elements 244, 246, 248, 250);

- identifying, via a hypothesizer, areas of improvement for each at least one subject employee based on the performance ranking/scoring (Column 5, Lines 35-40; Column 6, Lines 20-46; Column 9, Lines 21-47);

- mapping, via a qualitative mapping engine, the identified areas of improvement into a predetermined list of recommended actions for at least improving proficiency of skills (Column 3, Lines 7-16; Column 8, Lines 51-69; Figures 3b, 3c, elements 244, 246, 248, 296, 288, 292, 294; Figure 1, Element 53); and

- implementing, via a learning center, the mapped recommendations (Column 2, Lines 5-50; Figure 2).

McIllwaine et al. does not expressly teach measuring, via subsequently gather transactional data, the effect of the recommended actions on the revenue generating performance of the employee and the store as claimed.

McIllwaine et al. does not expressly teach measuring productivity improvement of the store resulting from the implementing of the at least one recommended action.

Matsko et al. teach measuring a change in the store performance as a result of the subject under observation applying the determined observation (Column 12, Lines 32-45, 49-65) in an analogous art of store performance management for the purpose of assisting decision makers in measuring/hypothesizing the impact of the recommended

actions on the store performance thereby assisting in their decisions (Column 11, Lines 52-63; Column 12, Lines 48-68).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing store performance as taught by McIllwaine et al. would have benefited from measuring productivity improvement of the store resulting from the implementing of the at least one recommended action in view of the teachings of Matsko et al.; the resultant system and method assisting users in analyzing the before/after affects (improvements) of the recommended actions (Matsko et al.: Column 11, Lines 52-63; Column 12, Lines 48-68).

Regarding Claim 65 McIllwaine et al. does not expressly teach that the transaction data further comprises sales and customer flow data as claimed.

Matsko et al. teach that the transaction data further comprises sales and customer flow data (Column 1, Lines 28-68; Columns 8-9; Figures 3, 3c, 3d) in an analogous art of measuring and analyzing store performance for the purpose of improving store and employee performance (Abstract; Column 12, Lines 5-68).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing business performance as taught by McIllwaine et al. would have benefited from including sales and customer flow

data in view of the teachings of Matsko et al.; the resultant system/method the resultant system/method assisting decision makers in improving store and employee performance (Matsko et al.: Abstract; Column 12, Lines 5-68).

Regarding Claim 66 McIllwaine et al. does not expressly teach that the sales data includes at least one of sales per hour, dollars per transaction, units per transaction, transactions per hour, traffic conversion percentage, customer traffic count or periodic goals as claimed.

Matsko et al. teach that the sales data includes at least one of sales per hour, dollars per transaction, units per transaction, transactions per hour, traffic conversion percentage, customer traffic count or periodic goals (Column 1, Lines 28-68; Columns 8-9; Figures 3, 3c, 3d) in an analogous art of measuring and analyzing store performance for the purpose of improving store and employee performance (Abstract; Column 12, Lines 5-68).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for measuring and analyzing business performance as taught by McIllwaine et al. would have benefited from including at least one of sales per hour, dollars per transaction, units per transaction, transactions per hour, traffic conversion percentage, customer traffic count or periodic goals data in view of the teachings of Matsko et al.; the resultant system/method assisting decision makers in

improving store and employee performance (Matsko et al.: Abstract; Column 12, Lines 5-68).

Regarding Claim 67 McIllwaine et al. teach that the mapping further comprises a predetermined correlation of a type of employee, the performance ranking and the recommended actions (Column 3, Lines 7-16; Column 8, Lines 51-68; Figure 3b, Elements 244, 246, 258; Figure 3c, Elements 286, 288, 292, 294).

Regarding Claim 68 McIllwaine et al. teach that the predetermined correlation corresponds to a matrix (Column 3, Lines 7-16; Column 8, Lines 51-68; Figure 3b, Elements 244, 246, 258; Figure 3c, Elements 286, 288, 292, 294).

Regarding Claim 69 McIllwaine et al. teaches defining and implementing a staffing profile indicative of an optimal combination of employee types, based on the performance data, the optimal combination including skills of each employee (Column 4, Lines 52-64; Column 5, Lines 35-40; Column 9, Lines 21-47).

Regarding Claim 70 McIllwaine et al. teach that the system (mapping engine) further comprises a rule-based expert system (Figure 1, Element 53).

Regarding Claim 71 McIllwaine et al. teach that the learning center further comprises a library of multimedia curriculum (CBT; Column 2, Lines 5-50).

Regarding Claim 72 McIllwaine et al does not expressly teach that the transaction data is retail sales data as claimed.

Matsko et al. teaches that the transaction data is retail sales data (Figures 3a, 3c, 3d) in an analogous art of measuring and analyzing store performance for the purpose of improving store and employee performance (Abstract).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for analyzing and measuring business performance as taught by McIllwaine et al. would have benefited from analyzing and measuring retail store performance in view of the teachings of Matsko et al.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Powers et al., U.S. Patent No. 5,684,964, teach a system and method for measuring, analyzing and improving business performance.

- Janovski et al., U.S. Patent No. 5,726,914, teach a system and method for measuring and analyzing store performance and recommending actions based on the analysis.

- Matsko et al., U.S. Patent No. 6,970,810, teach a system and method for hypothesizing recommended actions to improve measured and analyzed store and employee performance.

- Stuart et al., U.S. Patent Publication No. 2001/0032120, teach a system and method for measuring and analyzing employee performance.

- Graichen et al., U.S. Patent Publication No. 2001/032195, teach a system and method for identifying business performance improvements in an organization.

- Musafia et al., U. S. Patent Publication No. 2002/0038235, teach a system and method for measuring and analyzing employee/business performance/productivity.

Herbert et al., U.S. Patent Publication No. 2001/0056367, teach a system and method for measuring, analyzing and reporting employee performance.

- Fitz-Enz, The Mythology of Measuring Staff Performance (1993), teaches the old and well known method of measuring and analyzing employee/staff performance in order to improve staff as well as business performance wherein changes in performance are measured and identified in relation to the improvements/changes made.

- Jones et al., Work Group Performance Measurement and Feedback (1993), teaches a computer implement method for measuring and analyzing performance improvements in a retail store wherein changes in performances are identified.

- Jacobs, Operating stores: High octane execution (1994), teaches the old and very well known link between store performance and employee performance wherein improving store performance commonly focuses on improving the performance of the

store's employees wherein employees performance is analyzed and measured (e.g. scorecards) and used to drive store and employee performance improvement efforts (e.g. training).

- Achieving Organization Excellence Through the Performance Management System (1999), teaches the well known utilization of performance management systems to measure and analyze business and employee performance in order to improve the performance of both.

- Turning data into knowledge (1996), teaches the well known collecting/gathering and analysis of transaction data from a plurality of transaction data interfaces/systems comprising legacy, transaction, POS and external data in order to identifies performance insights or areas in need of improvement wherein performance is compared to standards/goals.

- Donthu et al., Retail Productivity Assessment Using Data Envelope Analysis (1998), teaches a system and method for collecting and analyzing a plurality of store performance transaction data from a plurality of data sources/sets wherein the system tracks performance over time.

- Jensen et al., A Systems Management Approach for Improvement of Organizational Performance Measurement Systems (2000) teaches the well known utilization of performance measurement systems to collect and analyze a plurality of data in order to improve the business' performance.

- Simons, Performance Measurement & Control Systems for Implementing Strategy (2000) teaches the well known utilization of performance measurement

systems to collect and analyze a plurality of data in order to improve the business' performance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/
Primary Examiner, Art Unit 3623